

*Supervisor*  
JUDI BOSWORTH

*Town Board*  
VIVIANA L. RUSSELL  
PETER J. ZUCKERMAN  
ANGELO P. FERRARA  
ANNA M. KAPLAN  
LEE SEEMAN  
DINA M. DE GIORGIO

*Town Clerk*  
WAYNE H. WINK, JR.

*Receiver of Taxes*  
CHARLES BERMAN

# **TOWN OF NORTH HEMPSTEAD**

## **DEPARTMENT OF PUBLIC WORKS**

**285 DENTON AVENUE**  
**NEW HYDE PARK, NY 11040**  
**(516) 739-6710**  
**FAX (516) 739-6717**



*Commissioner*  
PAUL J. DiMARIA, P.E.

*Deputy Commissioner*  
JILLIAN GUINEY, P.E.

April 8, 2016

Re: Request for Proposal for Professional Engineering Services for  
Aquatic Sand Removal at various Town Ponds: Leeds Pond in Plandome Manor,  
Mill Pond in Port Washington and Whitney Pond/Manhasset Valley Pond in Manhasset  
DPW Project No. 15-22

### **I. Introduction**

The Town of North Hempstead is a municipal corporation under the General Municipal Law of the State of New York and the Town Law of the State of New York serving a jurisdiction of approximately 220,000 residents, located in northwestern Nassau County.

As a result of Hurricane Sandy, waterways in several of the Town parks received heavy sand accumulation. Initial investigations have been conducted at several Town sites: Leeds Pond in Plandome Manor, Mill Pond in Port Washington North and the system including Whitney Lake within Whitney Pond Park and Manhasset Valley Park stream and pond in in Manhasset.

The Department of Public Works is interested in hiring a consultant to provide engineering services related to the design and permitting of projects as will be required for the proposed aquatic sand removal. Services to be performed as a result of this RFP shall include but not be limited to, sediment sampling, testing and analysis, preparation of regulatory permit applications and necessary follow up to secure permits, design services including preparation of plans and specifications as required for bidding purposes.

### **II. Procedures**

#### **A. Submission Period**

Respondents must submit their proposals on or before 3:30 pm on May 5, 2016.

#### **B. Preparation of Proposal**

Each proposal shall be prepared concisely, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete, accurate and reliable presentation. For ease of review, the Proposal must follow the outline in Section III of this RFP, entitled Requirements. Each proposal should fulfill the stipulations outlined, be clearly numbered and completely answer all questions listed.

#### **C. Number of Copies of Proposal**

Three hard copies are to be mailed or hand delivered to the attention of Paul DiMaria, P.E., Commissioner, Town of North Hempstead Department of Public Works 285 Denton Avenue New Hyde Park, N.Y. 11040. In addition, the Proposer must also submit a pdf of the proposal via CD or flash drive.

#### **D. Inquiries and Submission of Proposal**

Questions about the RFP and the submission of Proposals shall be directed in writing to:

Paul DiMaria, P.E., Commissioner  
Department of Public Works  
285 Denton Avenue  
New Hyde Park, NY 11040  
516-739-6717  
[dimariap@northhempsteadny.gov](mailto:dimariap@northhempsteadny.gov)

All proposals must be received at the above address before the Submission Deadline, either by hand delivery, courier or by certified mail in a sealed envelope, to the above office. The Town is under no obligation to return proposals. All contact with the authorized contact person shall be made by fax or email. No contact with any Town personnel other than the authorized contact person is allowed until such time as an award has been made. Violation of this provision may be grounds for immediate disqualification. Selected Proposers may be contacted by the Town's authorized contact person with questions aimed at clarifying their submission.

#### **E. Longevity of Proposals**

A proposal may be withdrawn at any time prior to the date specified as the Submission Deadline. However, no proposer may withdraw or cancel a Proposal for a period of one hundred and eighty (180) days following the Submission Deadline, nor shall the successful proposer withdraw or cancel or modify the proposal after having been notified that the Proposal has been accepted by the Town, except at the request of the Town, or with the Town's written consent.

#### **F. Method of Selection of Awardee**

Town representatives will evaluate each Proposal with emphasis on the following factors:

- |   |     |
|---|-----|
| - Understanding of Engineering Tasks                                | 20% |
| - Technical approach  | 20% |
| - Firm experience/Qualifications/Worked for Town of North Hempstead | 20% |
| - Man hours/Fee ratio   | 20% |
| - Engineering Fee   | 20% |

Note that an interview with the Town may be required.

#### **G. Right of Rejection by the Town**

Notwithstanding any other provisions of this RFP, the Town reserves the right to select the respondent that best meets the requirements of the RFP, and not necessarily the lowest bidder. Further, the Town reserves the right, for any or no reason and in its sole and absolute discretion, to (1) amend, in whole or in part, this RFP, (2) withdraw or cancel this RFP or (3) accept or reject any or all Proposals prior to execution of the contract for the Project for any or no reason and with no penalty to the Town.

#### **H. Notice of Award**

The Town shall inform the Awardee that they have been selected by means of a Notice of Award issued by the Town. Neither the selection of a respondent as the Awardee nor the issuance of a Notice of Award shall constitute a binding commitment on behalf of the Town to enter into any contract with the Awardee, as any binding arrangement must be set forth in definitive documentation negotiated between and signed by the Awardee and the Town.

## **I. Contract Negotiations**

The Town intends to enter into contract negotiations with the firm or firms selected, who shall be required to enter into a written contract or contracts (hereinafter the Contract) with the Town in a form satisfactory to the Town Board.

The Town reserves the right to negotiate the terms and conditions of the Contract with the selected Proposer if any. These negotiations could include all aspects of services and fees. Neither the selection of a Proposer nor the negotiation of the Contract with such Proposer(s) shall constitute a binding commitment on behalf of the Town to enter into a Contract with such Proposer(s), as any binding arrangement must be set forth in the Contract signed by both parties and is subject to all requisite approvals.

## **III. Requirements**

### **A. Background**

As a result of Hurricane Sandy, several of the Town park's waterways received heavy sand accumulation, initial investigations were conducted in 2014 for Leeds Pond in Plandome Manor, Mill Pond in Port Washington North and Whitney Pond within Whitney Pond Park in Manhasset and it has been determined that the removal of accumulated sand and sediment is necessary.

Initial investigations indicate that the estimated accumulation of materials in each location is as follows:

Leeds Pond –20,300 CY

Mill Pond –3,500 CY

Whitney Pond/Manhasset Valley Pond and interconnecting streams – 4,321 CY

A copy of the reports which have been prepared are available with this Request for Proposals (RFP) on the Town website at <http://www.northhempstead.com/content/16253/16942/default.aspx> as Attachments 1, 2 and 3.

Long term improvements for these areas and plans for quantities to be removed at each location shall be determined by the selected Consultant and the Town as design develops.

### **B. Scope of Services**

The Department of Public Works is interested in hiring a consultant to provide engineering services related to the design and permitting of projects as required to complete the proposed aquatic sand removal at Leeds, Mill and Whitney/Manhasset Valley Ponds. Work will include but not be limited to, sediment sampling, testing and analysis, preparation of regulatory permit applications and follow up necessary to secure permits, as well as the preparation of design documents for bidding purposes.

The exact scope of services required by the Town shall be set forth in the contractual agreement between the Town and the Awardee. The Scope of Services shall include, but is not limited to the following tasks:

1. Evaluate existing conditions at each site.
2. Obtain sediment samples for testing and analysis as may be required for permitting and disposal.
3. Prepare and file all necessary regulatory agency permits, identify in proposal.
4. Prepare preliminary plans for Town to review.
5. Provide a schedule for the work and permitting process and estimates to implement remedies.
6. Attend up to four (4) meetings with DPW and Town representatives to discuss project design requirements.

7. Prepare final design documents including construction plans and specifications in format suitable for bidding, following standard Town format.
8. Conduct pre-bid activities up to contract award, respond to contractor questions and prepare any addenda necessary, review and evaluate of bid proposals.
9. Identify additional tasks as necessary to fulfill project requirements.

**Please note, responding consultants shall provide separate fees for each site as independent project locations; three (3) separate bid packages will be prepared. All fees and estimates shall be itemized for each respective site in proposal. All design and construction work on this project shall be completed in accordance with the rules and procedures of the Governor's Office for Storm Recovery (GOSR).**

#### **C. Standard Practices**

In performing the services required under the Contract, the Awardee shall follow and adhere to the following standard Town practices insofar as they are applicable to the work to be performed.

1. An Architect, Landscape Architect or Professional Engineer (as appropriate) duly licensed and registered in the State of New York, and experienced in the type of work to be performed for the Town shall be in charge of all work.
2. A list of all professional personnel to be employed in the work shall be submitted to the Town for approval. If requested, the experience of such persons shall also be submitted. The Town reserves the right to deny approval of any such person, or to require their subsequent replacement with an individual of equal or superior capabilities without giving any reason for such action by the Town.
3. Any reports prepared under the Contract shall be of 8 ½ x 11 format with the 11 inch dimension being the vertical size. Cover and binding shall be as agreed upon by the Town. Oversize exhibits (if required) shall be foldouts or shall be contained within a "pocket" bound into the report. Digital copies of all materials shall be furnished to the Town and become property of the Town.
4. Any specifications prepared under the Contract shall:
  - a. be within an 8 ½ " x 11" format;
  - b. include the Town's General Conditions clauses (a current copy of which will be provided by the Town) which may be supplemented or modified upon approval by the Town of such supplements or modifications;
  - c. when printed, be color coded per the standard Town practices; and
  - d. have a cover, the content and format of which shall conform to current Town practices.
5. The word "plans" shall be synonymous with the work "drawings". Any plans prepared under the Contract shall:
  - a. have a title sheet conforming to current Town practice
  - b. be signed and sealed by the licensed professional on the title sheet
  - c. be of the following size:
    - i. 8 ½" x 11" of foldout multiples thereof, if to be bound into the specification book,

subject to the approval by the Town;

- ii. 22" x 36" for all highway, drainage and similar type projects;
  - iii. A minimum of 22" x 36" to a maximum of 36" x 48" for buildings, parks and similar type projects; and
  - iv. For mapping work, shall be on sheets of an appropriate length with a maximum width of 42 inches.
6. The Awardee shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by the Awardee under this Contract. The Awardee shall, without undue delays and without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other services.
7. All drawings and specifications submitted to the Town for final acceptance shall be accompanied by all necessary applications, certificates and approvals from Town, County, State, Federal or other governmental departments having jurisdiction over any phase of the work. Submission to such agencies shall be made by the Awardee in the name of the Town.
8. The Awardee shall design and assume responsibility for the sufficiency and adequacy of the design, plans and specifications and shall represent, in writing, to the Town that the design, plans and specifications will accomplish the purpose intended by the Town, to the Awardee's best professional knowledge and belief.

In the event, however, that the Awardee has, because of the existing state of knowledge within the profession, any reservations with regard to any aspect of the Project, it shall submit for review by the Town its reservations, enumerating with specificity, in writing, the reservations and the reasons therefore. Upon review of said reservations, the Town may, at its option, either accept the reservations or require the Awardee to redesign the Project without additional cost to the Town.

If in the opinion of the Awardee, any additions or changes of plans recommended or directed by the Town will increase the cost of the work beyond the estimated probably construction cost, the Awardee shall not incorporate said changes in its design unless specifically authorized and directed to do so by the Town. The Awardee shall advise the Town in writing of all costs due to the additions and changes as well as a detailed breakdown of same, prior to the authorization.
9. The Town will provide legal access, including the negotiation of access agreements and easement agreements, so that the Awardee may enter upon public and private lands as required for the Awardee to perform such work and inspection in the development of the Project.
10. The Town will give thorough consideration to all the Awardee's requests and proposals and shall inform the Awardee of all decisions within a reasonable time.
11. The Town will hold all required public hearings and serve all required legal notices.
12. The foregoing practices may be supplemented or modified, in writing, by the Town.
13. Notwithstanding any of these provisions, the Awardee shall, in all cases, conform to any special requirement of other governmental agencies where such conformity is a required condition for funding, grant approval, or submission/approval of applications and the like. Copies of all correspondence received and sent by the Awardee relative to this work shall be provided to the Town.
14. The Awardee shall prepare for and attend all meetings as directed by the Town's project manager.

The Awardee will be responsible for the preparation of all meeting minutes and the minutes shall be submitted to the Town within one (1) week of the meeting date.

15. The Awardee, on a monthly basis, shall prepare a letter reporting on its monthly activities, progress and any unresolved problems that are impeding the performance of the project.

**D. Non-Related Services**

In addition to any services performed by the Awardee in relation to the above Project, the Town may also utilize the services of the Awardee on work not specifically classified herein. The nature and scope of such services shall be described in a letter from the Town to the Awardee, directing them to proceed with any work as may be authorized by the Town.

Any and all testing work required under the agreement shall be subject to the approval of the Town prior to undertaking any such testing program. The Town will determine if it is in its best interest to use the facilities of private testing laboratories. The Awardee shall review the testing results and shall state, in writing, that they are acceptable or unacceptable.

**E. Change Orders**

In any instance involving the Awardee's change orders, the Awardee is required to obtain written authorization from the Town as to the details and cost of the proposed change order prior to authorizing the work to proceed under the change order.

**F. Consultant Liability**

The Awardee shall be responsible for all damage to life and property due to activities of the Awardee, its sub-contractors, agents or employees, in connection with its services under the Contract. The Awardee specifically agrees that its sub-contractors, agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Further, it is expressly understood that the Awardee shall indemnify, defend and save harmless the Town from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the Awardee under the agreement with the Town, and such indemnity shall not be limited by reason of enumeration of any insurance coverage provided. Negligent performance of service, within the meaning of this provision, shall include, in addition to negligence founded upon tort, negligence based upon the Awardee's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Nothing in this provision or in the contractual agreement shall create or give to third parties any claim or right of action against the Awardee or the Town beyond such as may legally exist irrespective of this provision in the signed Contract.

**G. Insurance**

The selected firm will be required to, to the fullest extent provided by law, defend and indemnify and save harmless the Town from claims, suits, action, damages and costs of every nature, kind, name and description resulting from the negligent performance of the services. Such defense and indemnity shall not be limited by reason of enumeration of any insurance coverage provided by the firm. Negligent performance of service shall include, in addition to negligence founded upon tort, negligence based upon the firm's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Nothing shall create or give third parties any claim or right of action against the firm or the Town beyond those provided by law. In addition, the selected firm will be required to procure and maintain during the term of any such agreement, with a carrier holding an "A" rating from AM Best Company, or its equivalent, and furnish certificates of insurance evidencing its

procuring, the following insurance policies:

1. Commercial General Liability insurance covering the liability of the firm, and indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of the services with a combined single limit (bodily injury/property damage) of One Million Dollars (\$1,000,000). The Town shall be named as additional insured on said policy.
2. Professional Errors and Omissions insurance in the minimum of One Million Dollars (\$1,000,000). The Town shall be named additional insured in such policy.
3. Automobile Liability combined single limit of One Million Dollars (\$1,000,000). The Town shall be named additional insured in such policy.
4. Excess Liability in the form of umbrella form of Four Million Dollars (\$4,000,000). The Town shall be named additional insured in such policy.
5. Worker's Compensation insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law §57(2).
6. Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers' Compensation Board pursuant to State Workers' Compensation Law §220(2).
7. Valuable papers insurance in the minimum amount of \$100,000.

At the time of execution of the Contract, the Awardee shall furnish the Town with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) days prior written notice is given to the Town. Additionally, the commercial general liability coverage shall name the Town of North Hempstead, and its agents, employees and representatives, as additional insureds.

#### **H. Extra Work**

If the Awardee is of the opinion that any work that it has been directed to perform is beyond the scope of the Contract and constitutes extra work, it shall promptly notify the Town of that fact, in writing. The Town shall be the sole judge as to whether or not such work is beyond the scope of the Contract and constitutes extra work. In the event the Town determines that the work constitutes "extra work" it shall provide extra compensation to the Awardee upon a fair and equitable basis.

The Awardee shall not commence any extra work until authorized to do so in writing by the Town.

#### **I. Surrender of Documents**

Upon termination or completion of the Contract, the Awardee shall surrender, within fifteen (15) days to the Town, all data, reports, maps, surveys, CADD files, material specifications, contracts, budgets, salary schedules, time records, plans, tracings, sketches, charts, photographs, and exhibits prepared, developed or kept in connection with or as a part of the Project. This would not pertain to any records or documents pertaining to the operation of the Awardee's business. The Awardee may retain in its possession copies of those records or documents which it considers necessary for proof of performance.

**J. Independent Contractor**

The Awardee, in accordance with its status as an independent contractor, shall covenant and agree that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be an officer or employee of the Town by reason hereof, and that it will not by reason thereof, make any claim, demand or application to, or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to, Workers' Compensation coverage, Disability benefits coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

The Awardee shall not engage, on a full-time or part-time or other basis during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the Town or any other agency or organization of the State or any other municipality except regularly retired employees, without the consent of the public employer of such person.

**K. Written Proposal Submission Elements**

Satisfactory Proposals shall be comprised of the following:

1. Narrative Response: the Narrative Response shall be included I the Proposal document, near the beginning, and be comprised of:
  - a. Service Summary/Cover Letter: this should provide a description of the key points of your statement, specifically addressing why your firm is qualified to provide the services to complete this Project. The email address, telephone number and facsimile number of your Proposal's contract person(s) must be included in your cover letter.
  - b. Qualifications: Provide background information on your firm, including but not limited to:
    - a. business overview
    - b. age of the business
    - c. names, addresses and positions of all persons having a financial interest in the company
    - d. state of formation (as applicable)
    - e. number of employees
    - f. annual revenue of the respondent
    - g. summary of relevant accomplishments, particularly those involving services similar to those required for the Project.
    - h. any other information that will permit the Town to determine capability of respondent to meet all contractual requirements.
    - i. identify:
      - i. Has your firm ever been cited by any authority for unscrupulous practice? If yes, provide details.
      - ii. Does your firm have any past or present suits with any current or former customers? If yes, provide details.
  - c. If available, a copy of the most recent Dun and Bradstreet Financial Report (complete full report) on your firm, as well as any updates subsequent to the date of the complete report.
  - d. If available, two (2) years most recent annual financial statements and all quarterly reports of financial statements since the last available annual financial statement, in form and content satisfactory to the Town.
  - e. Resumes and Organizational Chart: Please provide resumes of the individuals who would



comprise your operational team and the principal in charge. Describe only the people who would actually work on the Town's account. Specify the role each would play, as well as what backup coverage would be available in time of conflicting engagements. Illustrate the relationship(s) of the individuals with each other and with other firms that would comprise your operational team and principal-in-charge on an organizational chart. Include a list of any sub-contractors who may be used to perform the Scope of Services.

- f. A copy of the professional license(s) issued by the State Department of Education with respect to performing architectural, landscape architectural and/or engineering services and proof of licensure to do business in the State.
  - g. Fees/Costs: Provide information pertaining to fees or costs including the fully burdened billable hourly rates charged for the services of employees of the firm. In addition to being organized pursuant to an employee roster, fees and costs should be listed for out-of-pocket expenses. Provide a "not-to-exceed" cost to deliver the Scope of Services required for the Project. The fee shall be based on hours billed by only technical personnel. All administrative and clerical costs shall be included in your billing rate or multiplier. The proposal must contain a task by task cost summary with estimated hours of effort. In addition, the proposal must separate out profit, showing both the amount and percentage of the consultant's fee proposal that constitutes profit. The Town reserves the right to negotiate profit separately from the remainder of the consultant's fee proposal.
  - h. Schedule: provide a schedule for the completion of the project, with detail regarding the length of time which will be required to complete the tasks related to the design phase and a projection of the duration of the construction period.
  - i. Additional information that you believe pertinent to the Town's requirements. Please include your company or team internet links to web sites.
- 2. References: Names, titles, addresses and phone numbers of key contacts for five (5) customers, particularly include those for whom the Proposer has undertaken projects similar to this Project.
  - 3. Identify all adverse determinations against your firm, or its employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints concerning violations of federal, state or municipal equal opportunity laws or regulations.
  - 4. Has your firm, or any of its employees present or past, or anyone acting on its behalf, ever been convicted of any crime of offense arising directly or indirectly from the conduct of your firm's business, or has any of your firm's officers, director or persons exercising substantial policy discretion ever been convicted of any crime or offense involving business or financial misconduct or fraud? If so, please describe any such convictions and surrounding circumstances in detail.
  - 5. A description of any action, suit, proceeding or investigation pending or threatened against your firm including, without limitation, any proceeding known to be contemplated by government authorities or private parties.
  - 6. Has your firm, or any of its employees, or anyone acting on its behalf, been indicted or otherwise charged in connection with any criminal matter arising directly or indirectly from the conduct of your firm's officers, directors or persons exercising substantial policy discretion been indicted or otherwise charged in connection with any criminal matter involving business or financial misconduct or fraud which is still pending? If so, please describe any such indictments or charges and surrounding circumstances in detail.
  - 7. Has your firm, or any of its employees present or past, or anyone acting on its behalf, ever signed any sealed surveys for which your firm has not actively participated in the production thereof; or been

investigated by the New York Department of State for such activity? If so, please describe any such circumstances in detail.

8. Conflicts of Interest:

a. Please disclose:

i. Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

ii. Any family relationship that any employee of your firm has with a member, employee, or official of the Town that may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

iii. Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in contracting with or representing the Town.

b. Please describe any procedures your firm has, or would adopt, to assure the Town that a conflict of interest would not exist for your firm in the future.

9. Sub-consultants: All sub-consultants that are known to be part of the Prime's Proposal Team must supply all information required in this subsection as part of the Proposal's Written Submission Elements. All sub-consultants introduced to the project under the Prime after contracted by the Town must also supply the same as above and are subject to approval by the Town.

10. The Non-Collusive Proposal Submission Certification signed by a duly authorized representative of the Proposer, attached hereto and made a part hereof.

**IV. Additional Conditions and Information**

1. All materials submitted in response to this RFP will become property of the Town.

2. The Town reserves the right to conduct discussions with, and to request additional information from, one or more respondents. No respondent shall have any rights against the Town as a result of such discussions.

3. The Town reserves the right to negotiate separately with any source whatsoever.

4. The Town reserves the right to waive any irregularity in any Proposal received or any other aspect of this procurement.

5. Proposers are advised that with respect to this RFP, no contact with the Town personnel in any way related to this solicitation is permitted, except as shall be authorized by the employee designated herein as the Town's contact person as identified in Part II (E) hereof.

6. Each Proposal will be prepared solely at the cost and expense of the Proposer with the express understanding that there will be no claim whatsoever for reimbursement from the Town.

7. Submission of a Proposal shall constitute an offer on the part of the successful Proposer to become the Awardee, and to enter into a contract to undertake or complete the Project.

8. News releases or other public announcements relating to this RFP shall not be made by any party receiving this RFP without the prior written approval of the Town.

9. The Town and its respective officials and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, the Town does not warrant nor make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaims any liability for technical errors or difficulties of any nature that may arise in connection with the webpage on which this RFP is posted, or in connection with any other electronic medium utilized by Proposers or potential Proposers in connection with or otherwise related to the RFP.
10. Proposals submitted to the Town may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the State Public Officers Law ("FOIL"). A Proposer, submitting a Proposal may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such Proposer's competitive position. This characterization shall not be determinative, but will be considered by the Town when evaluating the applicability of any exemption in response to a FOIL request.
11. Each proposer acknowledges that the services to be performed as described in this RFP may be funded by monies received from the federal government. As such, the following terms and conditions will be included in any agreement between the Town and the successful Firm for the services, in addition to such contractual terms and conditions as may be required by the Town:
  - a. Terms relating to termination for cause and convenience by notice to the Firm. Such terms will include that the Town will pay the firm for the services rendered in proportion to the services to be rendered in accordance with the agreement.
  - b. A covenant by the Firm that is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the IMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension" and that the Firm will not subcontract with any party listed on the above-referenced list. Along with its response to this RFP, each proposer shall complete and submit the "Debarment and Suspension Certification" attached to this RFP.
  - c. A certification stating that (a) no Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement and (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Along with its response to this RFO, each proposer shall complete and submit the "Byrd Anti-Lobbying Amendment Certification" attached to this RFP.
  - d. A representation that the Town shall not be liable for any amounts over and above the amount stated in the agreement as consideration for the full and complete performance of the services listed in the agreement and that, if the firm incurs costs in excess of the amount of consideration stated in the agreement, the contractor will not be entitled to reimbursement, and the Town shall not be responsible to make reimbursement, of such excess costs.

- e. Provisions relating to compliance with the federal Clean Air Act and the Federal Water Pollution Control Act.
- f. Equal Opportunity Employment provisions stating:
  - i. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  - ii. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - iii. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - iv. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - v. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - vi. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - vii. The Firm will include the portion of the sentence immediately preceding paragraph (1) rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.

- g. Terms and conditions relating to Minority and Women-Owned Business Enterprise participation stating: "In accordance with Section 7(H) of the Town's Procurement Policy, the Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used whenever possible in subcontracting the services described in this Agreement. The term "Affirmative Steps" includes:
  - i. "Placing qualified small and minority businesses and women's business enterprises on solicitation lists. Contractor shall, prior to soliciting subcontractors, conduct research to locate minority businesses, women's business enterprises and businesses with labor surplus areas that have the potential to provide the materials, supplies or services that are the subject of the solicitation and research labor surplus areas in which the materials, supplies or services may be provided.
  - ii. "Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources. The businesses found by the procuring department shall be contacted and provided copies of the bid or other solicitation released by the procuring department.
  - iii. "Dividing total requirements, when economically and technically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. An example of this would be dividing a total construction contract into electrical, HVAC, plumbing and general construction work.
  - iv. "Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises. The procuring department could accomplish this by taking into account the distance of particular businesses from the Contractor and the business' resources.
  - v. "Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
  - vi. "The Contractor, prior to entering into an agreement with a subcontractor, shall obtain the approval of the Town. The Contractor's request for approval shall contain documentation adequate to demonstrate the Contractor's compliance with the terms of this Section."
- h. Such other provisions as may be required by Part 200 of Title 2 of the Code of Federal Regulations and described in Appendix II to such Part.

## **NON-COLLUSIVE PROPOSAL SUBMISSION CERTIFICATION**

By submission of this proposal, each proposer and each person signing on behalf of any proposal certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
3. No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

I, the undersigned, attest under penalty of perjury that I am an authorized representative of the Proposer and that the foregoing statements are true and correct.

Name of Proposer: \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Debarment and Suspension Certification**

The Bidder/Offeror certifies to the best of his or her knowledge and belief, that:

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that at the time the bidder or offeror submits its proposal that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

Name of Contractor: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Sworn to before this this \_\_\_\_\_

Day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public

**Byrd Anti-Lobbying Amendment Certification**

The Offeror/Bidder certifies, by submitting this offer or bid, to the best of his or her knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor: \_\_\_\_\_

Authorized Representative Name: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Sworn to before this this \_\_\_\_\_

Day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public